

29 MAR 1982

I

## Union Calendar No. 275

97TH CONGRESS  
2D SESSION

# H. R. 2528

[Report No. 97-456]

To amend the Economy Act to provide that all departments and agencies may obtain materials or services from other agencies by contract, and for other purposes.

---

### IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 1981

Mr. BROOKS introduced the following bill; which was referred to the Committee on Government Operations

MARCH 11, 1982

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

---

## A BILL

To amend the Economy Act to provide that all departments and agencies may obtain materials or services from other agencies by contract, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 ~~That section 7(a) of the Act of May 21, 1920, entitled "An~~
- 4 ~~Act making appropriations for fortifications and other works~~

1 of defense, for the armament thereof, and for the procure-  
2 ment of heavy ordnance for trial and service, for the fiscal  
3 year ending June 30, 1921, and for other purposes" (31  
4 U.S.C. 686(a)), as amended by the Act of June 30, 1932,  
5 commonly referred to as the Economy Act of 1932, is  
6 amended—

7 (1) by striking out "equipped to render" and in-  
8 serting in lieu thereof "to obtain by contract";

9 (2) by striking out the first proviso in such sec-  
10 tion, and by striking out "further" in the second pro-  
11 viso; and

12 (3) by striking out "competitive bids" in such  
13 second proviso and inserting in lieu thereof "contract".

14 *That section 7(a) of the Act of May 21, 1920, entitled "An*  
15 *Act making appropriations for fortifications and other works*  
16 *of defense, for the armament thereof, and for the procurement*  
17 *of heavy ordnance for trial and service, for the fiscal year*  
18 *ending June 30, 1921, and for other purposes" (31 U.S.C.*  
19 *686(a)), as amended by the Act of June 30, 1932, commonly*  
20 *referred to as the Economy Act of 1932, is amended—*

21 (1) by striking out "in a position to supply or  
22 equipped to render" and inserting in lieu thereof "in a  
23 position or equipped to supply, render, or obtain by  
24 contract";

1           (2) by striking out the first proviso in such sec-  
2           tion, and by striking out "further" in the second provi-  
3           so;

4           (3) by striking out "competitive bids" in such  
5           second proviso and inserting in lieu thereof "contract";  
6           and

7           (4) by adding at the end thereof the following new  
8           sentence: "Any condition or limitation applicable to the  
9           procurement funds of any executive department, inde-  
10          pendent establishment, bureau, or office which places  
11          an order or lets a contract under the provisions of this  
12          section shall be applied in placing such order or letting  
13          such contract."

97TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT  
2d Session } No. 97-456

## ECONOMY ACT AMENDMENTS

MARCH 11, 1982.—Committed to the Committee of the Whole House  
on the State of the Union and ordered to be printed

Mr. BROOKS, from the Committee on Government Operations,  
submitted the following

### REPORT

[To accompany H.R. 2528]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Operations, to whom was referred the bill (H.R. 2528) to amend the Economy Act to provide that all departments and agencies may obtain materials or services from other agencies by contract, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause and inserts a new text which appears in italic type in the reported bill.

### EXPLANATION OF AMENDMENT

Inasmuch as all after the enacting clause of H.R. 2528 was stricken and all language incorporated into the amendment, this report constitutes an explanation of the amendment.

### SUMMARY AND PURPOSE

H.R. 2528 is a technical amendment to the Act which is commonly referred to as the Economy Act of 1932. This amendment has the effect of authorizing all agencies of the Federal Government to obtain goods and services by contract in order to fulfill requisitions placed with them by any other agency in the Federal government. Currently this authority exists for the benefit of only five agencies. These agencies, listed in section 7(a) of the Act (31 USC 686(a)), are the "Department of the Army, Navy Department, Treasury Department, Federal Aviation Administration, and the Federal Maritime Commission."

## HEARINGS

A hearing on H.R. 2528 was held by the Subcommittee on Legislation and National Security on October 28, 1981. Testimony was received from the Comptroller General of the United States and the Deputy Director of the Office of Management and Budget, both of whom support the legislation.

## COMMITTEE ACTION

H.R. 2528 was introduced by Chairman Jack Brooks. The Committee on Government Operations ordered the bill reported on March 4, 1982, by a unanimous voice vote with a quorum present.

## HISTORICAL BACKGROUND

The Economy Act, enacted in 1932, permits government departments to place orders with one another "for materials, supplies, equipment, work, or services, of any kind that such requisitioned Federal agency may be in a position to supply or equipped to render . . ." but makes no mention of interagency requisitioning of materials or services to be obtained by contract. In his decision at 19 Comp. Gen. 544 (1939), the Comptroller General held that:

Section 601 of the Economy Act of June 30, 1932 (47 Stat. 417) does not authorize the transfer of funds from one Federal agency to another for the purpose of having the second agency procure the performance of work for the first agency by outside contracts, the authority being limited to orders that the requisitioned agency may be in a position to supply or equipped to render.

In 1942 the Economy Act was amended to allow agencies which had been requested to furnish supplies or to perform work for one of 5 specifically named agencies (the Departments of the Army, Navy and Treasury and the Federal Maritime Commission and the Federal Aviation Administration)<sup>1</sup> to do so by entering into a contract with a private contractor. As originally introduced, the 1942 amendment would have extended authority to contract out in order to benefit all agencies. The amendment was narrowed to cover only 5 agencies after concern was voiced that a general grant of such authority would result in transactions among too many agencies.

Since then, however, other statutes have authorized other agencies to enter into agreements for the performance of joint projects involving procurement by contract. For other than the five named agencies, however, the Comptroller General has held in 52 Comp Gen. 128 (1972), that

although contracts may be used in the case of joint agency research and study projects authorized by law, the end product must be needed and used by both agencies involved; but

<sup>1</sup> The departments and agencies are listed by their current names. The listing as it appeared in the language of the 1942 amendment is as follows: "... the War Department, Navy Department, Treasury Department, Civil Aeronautics Administration, and the Maritime Commission. . . ."

that, where only one agency needs work performed by contract, and the agency letting the contract does not itself need the product of the contract, then the restrictions of the Economy Act apply.

#### DISCUSSION

The Economy Act of 1932 permits agencies to place orders with other agencies for goods and services. However, only five named agencies—the Department of the Army, Navy and Treasury, the Federal Aviation Administration and the Federal Maritime Commission—are allowed to requisition goods and services that the servicing agency could supply “by contract.” H.R. 2528, which would amend the Economy Act to extend this authority to allow Federal agencies to contract out for goods and services on behalf of all other agencies, was introduced by Chairman Brooks after information had been received that the restrictions in the Economy Act were adversely affecting efforts to operate the Government economically and efficiently.

During hearings of the Legislation and National Security Subcommittee in October 1981, witnesses from both the Office of Management and Budget and the General Accounting Office supported enactment of the measure. As stated by Milton Socolar, then Acting Comptroller General:

The Act was designed to promote economy in Government operations by making it possible to use the most efficient Government resources available regardless of which agency possessed them.

\* \* \* \* \*

It seems axiomatic that economy and efficiency in Government will be furthered by allowing Federal agencies with greater capabilities in given areas to provide related services or procure specialized materials for other agencies with less experience.

In answer to a request from Chairman Brooks for examples of procurement problems caused by the general prohibition against contracting out, the Director of the Office of Management and Budget cited the difficulty experienced by the Coast Guard in placing orders with the Department of Defense, since the Coast Guard is not among the 5 listed agencies exempted from the provisions of the Economy Act that prohibit agencies from contracting out to fulfill requisitions of other agencies.

The prohibition in the Economy Act, of course, does not preclude agencies from obtaining necessary goods or services through their own resources. Agencies are already authorized to have necessary work performed by contracting directly for work or services with outside parties, rather than by requesting another agency to act as middleman. On occasion, however, it is more economical to have their orders executed through contracts with outside parties if such contracts are placed by another agency which already possesses the appropriate expertise.

Since 1942, when the Economy Act was amended to allow agencies to contract out for goods and services on behalf of only 5 specified agencies, numerous areas of agency expertise have been developed. With the authority extended to allow agencies to contract out on behalf of any other Federal agency, an agency having only an occasional requirement in a specific area could turn to an agency with substantial experience in the area for assistance. This would eliminate the need to duplicate the requisite expertise. For instance, if the Immigration and Naturalization Service has a requirement for night sensors for border protection, that agency could seek assistance from the Department of Defense which presumably has already developed expertise in that area. Or, if the Coast Guard had a requirement for navigational equipment, it could seek assistance from the Department of the Navy to acquire such, rather than duplicate research and development already under way or completed. Various statutes now permit such interagency requisitioning in specific areas; however, removal of the general restriction allows the maximum utilization by the Government of valuable expertise developed over the years in the various Government agencies. In addition, such generally-available authority creates the potential for wider use by the Government of quantity discounts or other benefits which may not have been available in the past. It will also permit an agency to use another agency which has some, though not all, of the capability to do the requisitioned work by allowing the requisitioned agency to simply contract out the part of the work that it cannot do.

In order to assure that the authorization/appropriation process is not circumvented, the amendment specifically requires that both the requisitioning agency and the requisitioned agency are otherwise authorized to procure the item or service in question.

#### ANALYSIS OF H.R. 2528

H.R. 2528 amends section 7(a) of the Act of May 21, 1920, entitled "An Act making appropriations for fortifications and other works of defense, for the armament thereof, and for the procurement of heavy ordnance for trial and service, for the fiscal year ending June 30, 1921, and for other purposes" (31 U.S.C. 686(a)), as amended by the Act of June 30, 1932, commonly referred to as the Economy Act of 1932—

(1) By striking out "in a position to supply or equipped to render" and inserting in lieu thereof "in a position or equipped to supply, render, or obtain by contract";

This provision has the effect of allowing a requisitioned agency to contract out for goods and services ordered by any other agency in the Federal Government. It is important to note that the requisitioned agency must, by virtue of its operating authority, be already able—"in a position or equipped"—to supply such goods or services, whether through its own resources or by contract with outside parties. The Comptroller General of the United States, in a letter to Chairman Brooks dated December 18, 1980 indicated that the law

was intended to authorize the procurement of additional equipment, supplies, materials and services by a performing

agency so long as the work was within the scope of the activities normally performed by the agency and adequate facilities already existed to perform the work.

Therefore, in our opinion, an agency may accept an order under the Economy Act for work or service which is within the scope of activities normally performed by the agency and for which it possesses adequate facilities to perform the work or service, even though the performing agency may find it necessary to procure additional supplies, materials or equipment.

Concerning the requisitioned agency's authority to hire additional personnel, the Comptroller General wrote,

In the absence of a clear expression of legislative intent on this matter, we will adopt the interpretation that best serves the purpose of the legislation in question, that is, to effect economy in the Government. 58 Comp. Gen. 674, 681 (1978). Therefore, since permitting agencies to add additional temporary personnel in order to perform work for which it already possesses facilities and expertise serves to effect economy in the Government, we hold that it is authorized under the Economy Act. (Letter to Chairman Brooks dated December 18, 1980.)

(2) By striking out the first proviso in such section, and by striking out "*further*" in the second proviso;

This provision deletes the sentence which restricts a requisitioned agency's contracting out authority to that which would benefit only five agencies. This deletion extends for the benefit of all Federal agencies authority for a requisitioned agency to contract out in order to fulfill orders from other Federal agencies.

(3) By striking out "competitive bids" in such second proviso and inserting in lieu thereof "contract;" and

The effect of this provision is to allow the requisitioned agency to use any method of procurement which is allowed by other laws governing Government procurement. Since the drafting of the "competitive bid" language, a separate body of law governing contracting out by Government agencies has developed. Implementing procurement regulations require that agencies obtain materials and services by competitive sealed bids whenever possible. When not possible, the regulations permit negotiation, again requiring competition whenever possible. Written justification and approval are required for any non-competitive procurement. These alternatives should be available when one agency is requisitioned by another, and the continued specifying of only one method of contracting could, in some cases, impede or prevent the carrying out of a requisition.

(4) By adding at the end thereof the following new sentence:

Any condition or limitation applicable to the funds of any executive department, independent establishment, bureau, or office which places an order or lets a contract under the provisions of this section shall be applied in placing such order or letting such contract.



6

This provision precludes any interagency activity which could result in the circumvention of conditions and limitations applicable to either the ordering or the requisitioned agency on the use of Government funds which are otherwise available for the procurement of goods or services. The Committee adopted the above language in order to eliminate any confusion or any possible doubt concerning the intent of H.R. 2528 as it relates to this issue.

#### ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

The following estimate prepared by the Congressional Budget Office in accordance with section 403 of the Congressional Budget Act is submitted as required by subdivision (c) of clause (2)(1)(3) of House Rule XI:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, D.C., March 5, 1982.

HON. JACK BROOKS,  
*Chairman, Committee on Government Operations,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 2528, a bill to amend the Economy Act to provide that all departments and agencies may obtain materials or services from other agencies by contract, and for other purposes, as ordered reported by the House Committee on Government Operations, March 4, 1982.

The bill will allow departments and agencies to utilize the existing expertise and/or economies in procuring goods and materials of other departments and agencies. It also allows for partial fulfillment of inter-agency orders by contracts for work or services with outside parties. It is expected that this bill will result in no additional costs to the government, and may result in some cost savings, although the magnitude of such savings cannot be estimated on the basis of available information.

Sincerely,

RAYMOND C. SCHEPPACH  
(For Alice M. Rivlin, Director).

#### COMMITTEE ESTIMATE OF COST

The committee agrees with the cost estimate contained in the submission of the Congressional Budget office above and presents that estimate as the Committee's pursuant to the requirements of Clause 7 of House Rule XIII.

#### INFLATIONARY IMPACT

In compliance with clause 2(1)(4) of House Rule XI, it is the opinion of this Committee that the provisions of this bill will have no inflationary impact on prices and costs in the operation of the national economy.

#### OVERSIGHT FINDINGS

The Committee has maintained continuous oversight of the agencies affected by this legislation but has made no detailed findings and recommendations other than those contained elsewhere in this report.

7

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

No new budget authority or tax expenditures are contained in this legislation.

## REVIEW OF EXISTING LAW

During consideration of this legislation all applicable laws, including the Economy Act of 1932, were reviewed.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman) :

## ECONOMY ACT OF 1932

SEC. 7. (a) Any executive department or independent establishment of the Government, or any bureau or office thereof, if funds are available therefor and if it is determined by the head of such executive department, establishment, bureau, or office to be in the interest of the Government so to do, may place orders with any other such department, establishment, bureau, or office for materials, supplies, equipment, work, or services, of any kind that such requisitioned Federal agency may be *[in a position to supply or equipped to render]* *in a position or equipped to supply, render, or obtain by contract*, and shall pay promptly by check to such Federal agency as may be requisitioned, upon its written request, either in advance or upon the furnishing or performance thereof, all or part of the estimated or actual cost thereof as determined by such department, establishment, bureau, or office as may be requisitioned; but proper adjustments on the basis of the actual cost of the materials, supplies, or equipment furnished, or work or services performed, paid for in advance, shall be made as may be agreed upon by the departments, establishments, bureaus, or offices concerned *[ : Provided, That the Department of the Army, Navy Department, Treasury Department, Federal Aviation Agency, and the Federal Maritime Commission may place orders, as provided therein, for materials, supplies, equipment, work, or services, of any kind that any requisitioned Federal agency may be in a position to supply, or to render or to obtain by contract ] : Provided [further], That if such work or services can be conveniently or more cheaply performed by private agencies such work shall be let by [competitive bids] contract to such private agencies. Bills rendered, or requests for advance payments made, pursuant to any such order, shall not be subject to audit or certification in advance of payment. Any condition or limitation applicable to the procurement funds of any executive department, independent establishment, bureau, or office which places an order or lets a contract under the provisions of this section shall be applied in placing such order or letting such contract.*

\* \* \* \* \*

○